

UNIVERSITY OF TORONTO
FACULTY OF LAW



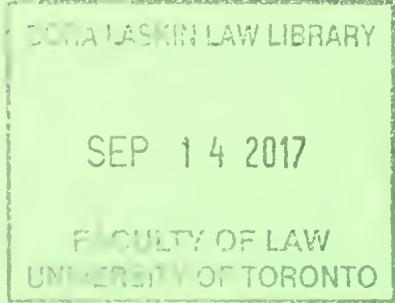
PROPERTY LAW
CASEBOOK VOL I

Professor Abraham Drassinower
Fall 2017

/
FACULTY OF LAW
UNIVERSITY OF TORONTO

Storage

KE
618
D73
2017
v.1
c.1



SEP 14 2017

PROPERTY LAW
CASEBOOK VOL I

Professor Abraham Drassinower
Fall 2017

FACULTY OF LAW
UNIVERSITY OF TORONTO



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

<https://archive.org/details/propertylawcasb01dras>

Table of Contents

Volume One

CHAPTER ONE: POSSESSION AND TITLE AT COMMON LAW	
(a) Introduction: What is Possession?	1
<i>Pierson v. Post</i> (1805) 3 Cai. R. 175.....	2
<i>Clift et al. v. Kane et al</i> (1870) 5 Nwfld L.R. 327.....	7
<i>The Tubantia</i> [1924] All ER 615 (Pr. & Ad. Div.)	15
<i>Popov v. Hayashi</i> (2002) WL 31833731.....	21
Rose, "Possession as the Origin of Property" (1985) 52 <i>University of Chicago Law Review</i> 73	31
(b) Finders: General Principles	47
<i>Armory v. Delamirie</i> (1722) 93 E.R. 664.....	48
<i>Keron v. Cashman et al.</i> , 33 A. 1055 (N.J. Chancery 1896)	49
Note.....	51
(c) Finders and Occupiers	52
<i>Parker v. British Airways Board</i> , [1982] 1 QB 1004 (C.A.).....	53
(d) Finders and Illegality.....	71
(e) Adverse Possession of Land: Introduction	74
Merrill, "Property Rules and Adverse Possession" (1985) 79 <i>Northwestern University Law Review</i> 1122	78
(f) Adverse Possession: The "Quality" of Possession.....	79
<i>Re St. Clair Beach Estates v. MacDonald</i> (1974), 50 D.L.R. (3d) 650 (Ont. Div. Ct.) ...	81
Mendes da Costa and Balfour, <i>Property Law</i> (Toronto, 1982).....	85

<i>Re Lundrigans Ltd. and Prosper et al.</i> (1982), 132 D.L.R. (3d) 727 (Nfld. C.A.).....	87
Notes	89
<i>Beaudoin v. Aubin</i> (1981), 125 D.L.R. (3d) 277(Ont. H.C.).....	90
(g) Adverse Possession and the Inconsistent Use Test: Judicial Repeal?	95
<i>Masidon Investments v. Ham</i> (1984), 45 O.R. (2d) 563 (C.A.)	95
Notes	103
(h) Retreat from the Inconsistent Use Test.....	106
<i>Buckinghamshire County Council v. Moran</i> [1989] 2 All E.R.225 C.A.....	107
<i>Teis v. Ancaster Town</i> (1997), 35 O.R. (3d) 216 (C.A.)	132
Mutual Mistake or Unilateral Mistake.....	139

CHAPTER TWO: BAILMENT

<i>Heffron v. Imperial Parking Co. et al</i> (1974), 3 O.R. (2d) 722	141
<i>Fairley & Stevens (1966) Ltd. v. Goldsworthy</i> (1973), 34 D.L.R. (3d) 554.....	150
<i>Punch v. Savoy's Jewellers Ltd. et al.</i> (1986), 54 O.R. (2d) 383.....	163
<i>Taylor Estate v. Wong Aviation Ltd.</i> [1969] S.C.R. 481	175

CHAPTER THREE: GIFTS

<i>Cochrane v. Moore</i> (1890), 25 Q.B.D. 57	183
<i>In re COLE, A BANKRUPT. Ex parte THE TRUSTEE OF THE PROPERTY OF THE BANKRUPT. [No. 486 of 1961]</i>	204
<i>Kooner v. Kooner</i> , [1979] B.C.J. No. 84.....	224
<i>Brown v. Rotenberg et al.</i> [1946]O.R. 363-376	228
<i>Re Zachariuc; Chevrier v. Public Trustee</i> , (1984) 16 E.T.R. 152 (Ont. Dist. Ct.).....	235

CHAPTER FOUR: THE NATURE OF PROPERTY

<i>Moore v. The Regents of the University of California et al.</i> (1990) 793P.2d 479.	236
---	-----

<i>International News Services v. Associated Press</i> 248 U.S. 215 (1918)	279
Notes	299
<i>Victoria Park Racing and Recreation Grounds Ltd. v. Taylor</i> [1937] HCA 45.....	302
<i>Stewart v. The Queen</i> (1988), 50 D.L.R. (4th) 1 (S.C.C.).....	326
Notes	340
<i>Caratun v. Caratun</i> (1992), 42 R.F.L. (3d) 113 (Ont. C.A.)	341
Notes	351
<i>Saulnier v. Royal Bank of Canada</i> , [2008] 3 S.C.R. 166	352
<i>Tsilhqot'in Nation v. British Columbia</i> , 2014 SCC 4	367

Volume 2

CHAPTER FIVE: THE RIGHT TO EXCLUDE

<i>Harrison v. Carswell</i> (1975), 62 D.L.R. (3d) 68 (S.C.C.)	1
Notes....	13
<i>Cadillac Fairview Corp. v. R.W.D.S.U.</i> (1989) 71 O.R. (2d) 206 (Ont. C.A.).....	15
T.W. Merrill, "Property and the Right to Exclude"	28

CHAPTER SIX: INTRODUCTION TO THE COMMON LAW OF REAL PROPERTY - THE DOCTRINES OF TENURE AND OF ESTATES

(a) Introduction to Tenure and Estates.....	29
Gray, <i>Elements of Land Law</i>	29
(b) Types of Estates: Gray, <i>Elements of Land Law</i>	32
R. Scane, Notes on Life Estates and Estates in Fee Tail.....	33
Note on Presumptions and Words of Limitation	36
(c) Present and Future Interests	37

(d) Introduction to Conditional Estates	39
(e) Conditions Subsequent: Defeasible and Determinable	
<i>Re McColgan</i> , [1969] 2 O.R. 152.....	41
(f) Conditions and Uncertainty.....	47
<i>Sifton v. Sifton</i> , [1938] 3 All E.R. 435 (P.C.– Ont.).....	48
<i>Clayton v. Ramsden</i> , [1943] A.C. 320 (H.L.)	54
Notes	70
(g) Conditions and Public Policy	71
<i>Re Noble and Wolf</i> , [1949] 4 D.L.R. 375 (Ont. C.A.).....	72
Notes	73
<i>Re Canada Trust Co. and Ontario Human Rights Commission</i> (1990), 69 D.L.R. (4 th) 321 (Ont. C.A.)	74
Notes	83
Restraints on Alienation: General	89
<i>Laurin v. Iron Ore Company of Canada</i> (1977), 82 D.L.R. (3d) 634 (Nfld. S.C.T.D.)	91
<i>Stephens v. Gulf Oil Canada Ltd. et. al.</i> , (1975) 25 C.P.R. (2d) 64 (O.C.A.)	97

CHAPTER SEVEN: EASEMENTS

(a) Introduction	105
(b) Characteristics of Easements	106
<i>In Re Ellenborough Park</i> , [1956] 1 Ch. 131 (C.A.)	107
Notes.....	108
Positive and Negative Easements	110
<i>Phipps v. Pears</i> , [1965] 1 Q.B. 76 (C.A.)	111

(c) Creation by Express or Implied Grant	
Express Grants and Reservations.....	120
Implied Grants and Reservations	120
Exceptions to the General Rules	123
<i>Wong v. Beaumont Property Trust</i> , [1965] 1 Q.B. 173 (C.A.).....	126
<i>Sandom v. Webb</i> , [1951] 1 Ch. 808 (C.A.).....	139
<i>Barton v. Raine</i> (1980), 114 D.L.R. (3d) 702 (Ont. C.A.).....	165
<i>Toronto-Dominion Bank v. Wise</i> , 2016 ONCA 629.....	170
Problems	174

(d) Creation by Presumed Grant	176
User as of Right.....	178
<i>Garfinkel v. Kleinberg</i> , [1955] 2 D.L.R. 844 (Ont. C.A.).....	180
(e) The Scope of Easements and Termination	183

CHAPTER EIGHT: APPROPRIATION OF PERSONALITY

<i>Krouse v. Chrysler Canada Ltd.</i> (1973) 1 O.R. (2d) 225	185
<i>Athans v. Canadian Adventure Camps Ltd.</i> (1977) 80 D.L.R. (3d) 583.....	193
<i>Gould Estate v. Stoddart Publishing Co.</i> (1996), 30 O.R. (3d) 520 (G.D.).....	202
Notes	206

CHAPTER NINE: COPYRIGHT

<i>Walter v. Lane</i> , [1900] A.C. 539 (H.L.).....	208
<i>CCH Canadian Ltd. and Others v. The Law Society of Upper Canada</i> , [2004] 1 S.C.R.339	232

CHAPTER TEN: TRADEMARKS

Mattel, Inc. v. 3894207 Canada Inc., [2006] 1 S.C.R. 772 257

CHAPTER ELEVEN: PATENTS

Diversified Products Corp. v. Tye-Sil Corp. (1991), 35 C.P.R. (3d) 350 (F.C.A.) 280